

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

KEVIN HALL,

Petitioner,

v.

WARDEN, FCI MENDOTA,

Respondent.

Case No. 1:22-cv-1107 JLT SKO (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS
(Doc. 3)

ORDER DISMISSING PETITION FOR WRIT
OF HABEAS CORPUS, DIRECTING CLERK
OF COURT TO ENTER JUDGMENT AND
CLOSE CASE, AND DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY

The assigned magistrate judge observed that, “Petitioner is challenging the validity and constitutionality of his conviction and sentence as imposed by the United States District Court for the District of Nevada, rather than an error in the administration of his sentence.” (Doc. 3 at 3.) Thus, the magistrate judge determined “the appropriate procedure would be to file a motion pursuant to § 2255 in the District of Nevada, not a habeas petition pursuant to § 2241 in this Court” (*Id.*) Because Petitioner did not do so and made no showing the remedy was inadequate or ineffective, the magistrate judge recommended the petition “be dismissed for lack of jurisdiction.” (*Id.* at 4.) Those Findings and Recommendations contained notice that any objections thereto were to be filed within 21 days after service. (*Id.*) To date, no objections have been filed, and the deadline to do so has expired.

Pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(C), the Court conducted a *de novo*

1 review of the case. Having carefully reviewed the entire matter, the Court concludes the Findings
2 and Recommendations are supported by the record and proper analysis.

3 In addition, the Court declines to issue a certificate of appealability. A prisoner seeking a
4 writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition,
5 and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-
6 336 (2003). A certificate of appealability is required for a successive § 2255 motion that is
7 disguised as a § 2241 petition. *Harrison v. Ollison*, 519 F.3d 952, 958 (9th Cir. 2008); *Porter v.*
8 *Adams*, 244 F.3d 1006, 1007 (9th Cir. 2001). The controlling statute in determining whether to
9 issue a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

10 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a
11 district judge, the final order shall be subject to review, on appeal, by the court of
appeals for the circuit in which the proceeding is held.

12 (b) There shall be no right of appeal from a final order in a proceeding to test
13 the validity of a warrant to remove to another district or place for commitment or
14 trial a person charged with a criminal offense against the United States, or to test
the validity of such person's detention pending removal proceedings.

15 (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an
appeal may not be taken to the court of appeals from—

16 (A) the final order in a habeas corpus proceeding in which the
17 detention complained of arises out of process issued by a State
court; or

18 (B) the final order in a proceeding under section 2255.

19 (2) A certificate of appealability may issue under paragraph (1) only if the
20 applicant has made a substantial showing of the denial of a constitutional
right.

21 (3) The certificate of appealability under paragraph (1) shall indicate which
22 specific issue or issues satisfy the showing required by paragraph (2).

23 If a petition is denied, the Court may only issue a certificate of appealability when a petitioner
24 makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To
25 make a substantial showing, the petitioner must establish that “reasonable jurists could debate
26 whether (or, for that matter, agree that) the petition should have been resolved in a different
27 manner or that the issues presented were ‘adequate to deserve encouragement to proceed
28 further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S.

880, 893 (1983)).

In the present case, the Court finds Petitioner has not made the required substantial showing of the denial of a constitutional right to justify the issuance of a certificate of appealability. Reasonable jurists would not find the Court's determination that Petitioner is not entitled to the requested federal habeas corpus relief debatable, wrong, or deserving of encouragement to proceed further. Thus, the Court declines to issue a certificate of appealability. Accordingly, the Court **ORDERS**:

1. The Findings and Recommendations issued on September 2, 2022 (Doc. 3), are **ADOPTED** in full.
2. The petition for writ of habeas corpus is **DISMISSED** without prejudice.
3. The Clerk of Court is directed to enter judgment and close the case.
4. The Court declines to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: **October 7, 2022**


UNITED STATES DISTRICT JUDGE